



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/123,614	07/28/98	MIDDLEMAN	12032 WC

QM32/0717  
SHELDON & MARK  
ATTN KARIN E PETERKS  
225 SOUTH LAKE AVENUE 9TH FLOOR  
PASADENA CA 91101

EXAMINER  
RODRIGUEZ, C

ART UNIT	PAPER NUMBER
3763	7

DATE MAILED: 07/17/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/123,614

Applicant(s)

Middleman et al

Examiner

CJA

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## P r i d for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 5/3/00
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disp sition of Claims

- ☒ Claim(s) 1, 2, 7-11, 22, 24-27 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1, 2, 8-11, 22 is/are rejected.
- ☒ Claim(s) 7, 24-27 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachm nt(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Acti n Summary

Art Unit: 3763

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 11, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Cathcart et al(5,681,347).

Cathcart et al disclose a device 10 comprising a tubular element 13 comprising a hollow tubular lumen, a deployment means 17, and a plurality of resilient anchoring members 24 as claimed.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over et al Cathcart et al in view of Hayman et al(5,267,960).

Art Unit: 3763

Cathcart et al disclose the invention substantially as claimed. However, Cathcart et al does not disclose the anchoring members comprising spring steel.

Hayman et al teaches an anchor 19 having arms 21 made of spring steel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cathcart et al by providing to the anchoring members with the spring steel materials as evidenced by Hayman et al in order to secure the anchoring members to the tissue.

5. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over et al Cathcart in view of Abrams(5,492,119).

Cathcart et al disclose the invention substantially as claimed. However, Cathcart et al does not disclose the anchoring members comprising a pseudo elastic material, and being nickel titanium alloy.

Abrams teaches a catheter apparatus comprising control wires having curved feet made of nitinol for anchoring purposes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cathcart et al by providing the pseudo elastic material nitinol as well known by Abrams for anchoring purposes.

***Allowable Subject Matter***

6. Claims 7, and 24-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3763

***Response to Arguments***

7. Applicant's arguments with respect to claims 1, 2, 7-11, 22, and 24-27 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gory et al., and Shturman all disclose devices analogous to that as claimed.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

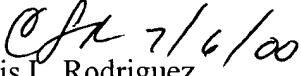
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3763

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cris L. Rodriguez whose telephone number is (703) 308-2194. The examiner can normally be reached on Monday-Friday from 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, Wynn Coggins can be reached on (703) 308-1344. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
Cris L. Rodriguez  
July 6, 2000

  
WYNN WOOD COGGINS  
SUPERVISORY PATENT EXAMINER